



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

September 22, 1950

Hon. C. Bennett  
County Attorney  
Crane County  
Crane, Texas

Opinion No. V-1109

Re: Legality of holding an  
election to levy added  
county taxes for farm-  
to-market roads or flood  
control prior to 1951.

Dear Mr. Bennett:

You present for the opinion of this office the following question:

"Can an election be held anytime during the remainder of the year 1950 for the purpose of authorizing the levy of the additional 30¢ upon the \$100.00 valuation to become effective on January 1, 1951?"

This office has heretofore held that the provisions of House Bill 107, Acts 51st Leg., R.S. 1949, ch. 464, p. 849 (Art. 7048a, V.C.S.), which require a local election to determine if and when the 30-cent per \$100.00 valuation county tax authorized by the amendment to Section 1-a of Article VIII of the Texas Constitution shall be levied, are valid. Atty. Gen. Op. V-1077 (1950)

Section 1c of Article VIII provides as follows:

"Provided, however, the terms of this Resolution shall not be effective until House Joint Resolution No. 24 is adopted by the people and in no event shall this Resolution go into effect until January 1, 1951." (Emphasis added)

Moreover, in the emergency clause of House Bill 107, supra, (Article 7084a), it is stated that "this Act shall be in force from and after its passage, and shall take effect on January 1, 1951." (Emphasis added) This clearly reflects the Legislature's interpretation of the effective date of the above Resolution.

Thus, we see that both under the Constitution and the emergency clause of the Act, the terms thereof will not

be operative until January 1, 1951. Therefore, there will be no effective authority to order and hold the election until January 1, 1951.

In Corpus Juris, Vol. 20, p. 95, it is stated:  
" . . . an election held without affirmative constitutional or statutory authority is universally recognized as being a nullity. An election purporting to have been held under a statute which by its terms had not then gone into effect is void."

In the case of Smith v. Morton Independent School District, 85 S.W.2d 853 (Tex. Civ. App., 1935, error dismissed), it was held:

"In our form of government elections must be held by virtue of some legal authority, and an election held without affirmative statutory authority or contrary to a material provision of the law is universally held to be a nullity."

It is true that it is provided in the emergency clause of House Bill 107 that the bill "shall be in force from and after its passage," but it is our opinion that this means, when considered with the clause immediately following, that upon enactment such bill would become a part of our statute books. It could have no other meaning, for immediately following it is provided that the bill "shall take effect on January 1, 1951." The intent is clear, when considered with Section 1c of Article VIII, that the bill would not become operative until January 1, 1951.

The effect of this conclusion will not deprive the county of a year's tax, for it is manifest that no tax could be levied for any year prior to 1951. After the operative date of the Constitutional provision and the statute, there is ample time to order and hold an election so that the tax can be levied, along with the other county taxes, for the year 1951.

#### SUMMARY

An election for the purpose of authorizing the commissioners' court to levy a tax for farm-to-market roads or flood control cannot legally be ordered and held prior to January 1, 1951.

Article VIII, Secs. 1a and 1c, Tex. Const.;  
Art. 7048a, V.C.S.

APPROVED:

Everett Hutchinson  
Executive Assistant

Charles D. Mathews  
First Assistant

GWS-s

Yours very truly,

PRICE DANIEL  
Attorney General

By

  
George W. Sparks  
Assistant